

**U.S. DEPARTMENT OF  
AGRICULTURE  
PROPRIETY OF AGREEMENTS  
BETWEEN THE  
FOREST SERVICE,  
NATIONAL FOREST  
FOUNDATION AND SUBARU  
OF AMERICA**

**FEBRUARY 1998**

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## **EXECUTIVE SUMMARY**

### **PROPRIETY OF AGREEMENT BETWEEN THE FOREST SERVICE, NATIONAL FOREST FOUNDATION AND SUBARU OF AMERICA**

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#### **PURPOSE**

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This report presents the results of our evaluation of the agreement the National Forest Foundation (NFF) executed with Subaru of America. Our objective was to determine if the agreement was proper and in compliance with the U.S. Department of Agriculture (USDA) and agency policies and regulations concerning the endorsement and promotion of commercial activities. Because the partnership of FS, NFF, and Subaru has been widely viewed as a prototype for future government/industry cooperation, it is important that the effort be carried out in accordance with all applicable policies and regulations.

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#### **RESULTS IN BRIEF**

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Forest Service (FS) is participating in a partnership with Subaru and NFF. Since product promotion is a key purpose of the partnership, the arrangement between the three entities is improper. The ongoing partnership among the agency, NFF and Subaru violates departmental and agency policies and regulations concerning the endorsement and promotion of commercial activities. In addition, while Smokey Bear is property of the Federal government and unauthorized use is a crime, the written agreement between the NFF and Subaru commits Smokey Bear to attend 10 auto shows and, among other duties, to distribute literature about the NFF's role in restoring forests that have been adversely affected by wildfire. The agreement also makes commitments on behalf of the FS program NatureWatch. A private entity, such as the NFF, should not make commitments of U.S. government property. Authorizing legislation for the NFF does not allow such a commitment of government property.

## KEY RECOMMENDATIONS

We recommended that FS cancel further participation in the partnership because the partnership agreement is improper and violates established agency and departmental policies and regulations.

## AGENCY POSITION

In their February 11, 1998, response to the draft report, FS officials reported that they had met with officials of the NFF and told them that: 1) Smokey Bear will not appear at future auto shows and they must modify their agreement with

Subaru of America to eliminate any commitments or requests for the involvement of Smokey Bear; 2) they must discontinue any commitment or branding of NatureWatch; 3) they must ensure that Forester vehicles appearing at auto shows do not bear the FS shield; and 4) they must remove the "Official Vehicle" decal from all Forester vehicles donated to the FS by the NFF.

The response further stated that FS will cancel its MOU with NFF and initiate discussions to renegotiate the agreement. Also, the FS has requested that the NFF modify its agreement with Subaru of America to reflect the changes agreed upon when the FS/NFF agreement has been negotiated.

The response further stated that by taking these actions, FS officials believed that the agency would avoid the need to cancel further participation in the partnership. In the opinion of the responding official, it is crucial to enhancing FS's mission that partnerships remain a viable option.

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## INTRODUCTION

### BACKGROUND

The NFF is a private foundation set up to "encourage, accept, and administer private gifts of money, and of real and personal property for the benefit of or in connection with the activities and services of the FS."<sup>1</sup>

The NFF was established to provide a method for FS to receive things of value from the private sector that FS, as a government entity, could not solicit or accept. The NFF is not bound by such rules and is free to accept private sector gifts and to enter into agreements with private sector entities. The only restriction on the NFF's solicitation and acceptance of gifts is the broad clause which requires that their activities provide a benefit to or connection to FS activities.

The NFF Act was enacted on November 16, 1990, establishing the NFF as a charitable and nonprofit corporation. The purposes of the foundation are to

- encourage, accept, and administer private gifts of money, and of real and personal property for the benefit of, or in connection with, the activities and services of the FS,
- undertake and conduct activities that further the purposes for which units of the National Forest System are established and are administered and that are consistent with approved forest plans, and
- undertake, conduct and encourage educational, technical, and other assistance, and other activities that support the multiple use, research, cooperative forestry, and other programs administered by the FS.

Subaru of America, Inc. is a wholly owned subsidiary of Fuji Heavy Industries Ltd. of Japan. Headquartered near Philadelphia, the company markets and distributes Subaru vehicles, parts, and accessories through 630 franchised dealers throughout the United States. In July 1997, Subaru rolled out the Forester, a new hybrid sport utility vehicle manufactured entirely in Japan. The Forester

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<sup>1</sup>16 USC 583j(b)(1)

was named the official vehicle of the NFF.

The NFF and Subaru entered into a written agreement in July 1997. The stated purpose of that agreement was for NFF to benefit the nation's forests and for Subaru to promote and showcase its product lines. The agreement provided for responsibilities and benefits for each party. (See exhibit A for a copy of the Agreement.)

Under the agreement, Subaru would contribute \$25,000 to the Forester Fund of the NFF and donate \$150 to the NFF each time an NFF member (or member of a partner organization) bought a Subaru Forester. In addition, Subaru would donate the lease of 35 Forester vehicles to the NFF. Thirty-four of the leased vehicles were to be used by FS for a 2-year period and then be returned to the company. One vehicle was to be used by the NFF under a similar arrangement. Subaru would also publish advertising for NFF in popular magazines, develop links to and from an internet page, and make other in-kind donations. Subaru estimated the combined value of these efforts to be \$1,627,104.

Terms of the agreement required the NFF to arrange for the 34 donated vehicles to be used by FS at prominent locations agreed to by FS, NFF and Subaru. According to the agreement, "Forester vehicles will be utilized in National Forests; NFF will use its best efforts to cause Forester vehicles to be used where they will gain the most visibility." The NFF would also arrange for Smokey Bear to attend a minimum of 10 major auto shows per year as designated by Subaru and distribute literature about fire prevention and NFF's role in restoring forests that have been adversely impacted by wildfire. This literature would bear "Subaru branding", a term not further defined in the written agreement. The NFF also committed to make Subaru a sponsor of NatureWatch and that Subaru would receive branding on all NatureWatch collateral materials such as displays, web sites, brochures, etc. NFF would also incorporate Subaru marks on NFF trail maps, brochures and literature produced or sponsored by NFF, allow the use of NFF's marks in Subaru advertising, highlight Subaru on the NFF web page, and generally support the partnership arrangement.

The agreement also includes terms concerning appearances by Smokey Bear. In 1944, Smokey Bear's image was first described on paper to be the symbol of a public service campaign for forest fire prevention by officials of the FS's Cooperative Forest Fire Prevention Program. The purpose of the program was to encourage average citizens across the country to participate personally in fire prevention as an aid to the World War II effort. In 1950, a badly burned bear cub was rescued after a fire in the Lincoln National Forest and Smokey became a national forest fire prevention

symbol. In 1952, Congress removed the symbol of Smokey Bear from the public domain in P.L. 82-359, the Smokey Bear Act. The purpose was to protect Smokey from unfavorable publicity and undesirable commercial use. This law was amended in 1974 to give the Chief of the FS the authority to protect the image of Smokey Bear for fire prevention.

FS policy prohibits the use of Smokey Bear as a proprietary brand name. By words or illustrations, Smokey is not to endorse a commercial product or service. The Smokey Bear symbol is always to be used in conjunction with an approved fire prevention message. Unauthorized commercial uses are prohibited.

NatureWatch is a FS conservation education program intended to offer people the tools they need to explore, appreciate, and ultimately conserve the great outdoors. Each of the 820 NatureWatch viewing areas allow anglers, loggers, campers, families, and others to observe the fish, wildlife, and plants that live on the national forest. NatureWatch partners include the American Association of Botanical Gardens and Arboretums, Boone and Crockett Club, Flora of North America, Rocky Mountain Elk Foundation, and Telluride Ski and Golf Co.

The agreement, as described above, was originally intended to be signed by FS, NFF, and Subaru. However, the Office of the General Counsel (OGC) issued an opinion to the Chief of the FS on July 25, 1997, recommending that FS not sign the agreement, in part, because the agreement stated that its purpose was the promotion of Subaru products and such promotion would be in violation of USDA policy. Rather than draw up a new agreement, the original agreement was left standing between the NFF and Subaru, and a new document, a Memorandum of Understanding (MOU), was executed among the three parties: FS, NFF, and Subaru. (See exhibit B.) This MOU was intended to incorporate the suggestions of OGC and was signed by the three parties in August 1997. The MOU described only the use for two years of the donated vehicles and did not address the other elements of the partnership arrangement as originally proposed. As further described in the Finding section of this report, FS officials operated as if the agency had been a party to the written agreement between NFF and Subaru and participated fully in all phases of the partnership. FS, NFF and Subaru, in fact, operated in accordance with the agreement which had product promotion as a primary objective.



## OBJECTIVE

The primary objective of the review was to determine if the agreements among Subaru, NFF and FS were proper and in compliance with departmental and agency policies and regulations concerning the endorsement and promotion of commercial activities.

## SCOPE

We performed this evaluation at various USDA offices in Washington, D.C. and conducted interviews with officials of FS, OGC, and the NFF. The evaluation was conducted in accordance with the Quality Standards for Inspections established by the President's Council on Integrity and Efficiency.

## METHODOLOGY

To accomplish our objectives, we reviewed legislation pertaining to the NFF, reviewed the agreement between the NFF and Subaru and the MOU among FS, NFF, and Subaru, and interviewed attorneys in OGC and officials of FS and NFF. We also reviewed FS regulations concerning Smokey Bear, reviewed sample advertising material from Subaru, and NFF newsletters pertaining to the agreement between NFF and Subaru, and attended an auto show where Smokey Bear was scheduled to appear.

## **FINDINGS AND RECOMMENDATIONS**

### **I. THE PARTNERSHIP BETWEEN THE FS, SUBARU, AND THE NFF SHOULD BE DISSOLVED**

The partnership among FS, NFF, and Subaru has, as its primary objective, product promotion and, as such, should be dissolved. The ongoing partnership violates departmental and agency policies and regulations concerning the endorsement and promotion of commercial activities. Further, although Smokey Bear is property of the Federal Government and unauthorized use is a crime, the written agreement between the NFF and Subaru commits Smokey Bear to attend 10 auto shows and, among other duties, to distribute literature about the NFF's role in restoring forests that have been adversely affected by wildfire. According to the agreement, the purpose of partnership activity is to benefit the nation's forests and to promote and showcase Subaru product lines. The agreement also makes commitments on behalf of the FS program NatureWatch. A private entity, such as the NFF, should not make commitments of U.S. government property. Finally, the NFF and the FS have realized little financial benefit from the agreement to date. Revenues to the NFF, as estimated by Subaru, are unlikely to materialize.

#### **THE PARTNERSHIP AGREEMENT, IN BOTH APPEARANCE AND ACTION VIOLATES AGENCY POLICY AND DEPARTMENTAL REGULATIONS**

#### **FINDING NO. 1**

According to the Chief of the FS, the arrangement between the three parties is "a significant partnership for the FS, as well as for Subaru and the National Forest Foundation", that will

"increase public awareness of ... opportunities for partnership with

the FS." <sup>2</sup> However, the partnership agreement, as currently structured, violates FS policy prohibiting partnerships which directly further profit interests. <sup>3</sup> Additionally, the "Official Vehicle ..." seal on the 34 Subarus donated for use by the FS for two years constitutes a "potential advertising or other commercial benefit" to Subaru and is prohibited by Agriculture Property Management Regulations (APMR). <sup>4</sup> The markings also violate the departmental policy to avoid endorsements, directly or indirectly, of any commercial enterprise or product. <sup>5</sup> Because the partnership among FS, NFF, and Subaru has been widely viewed as a prototype for future government/industry cooperation, it is important that the effort be carried out in accordance with all applicable policies and regulations. Failure to do so could result in significant negative publicity and irrevocably damage future opportunities to leverage scarce Federal funds with private resources.

As described in the background section of this report, FS did not sign the umbrella agreement between Subaru and NFF, based in part on concerns expressed by the OGC. However, FS officials have supported the agreement and acted in such a way that FS is, in fact, a party to the agreement as it was originally structured. For example, a press release quotes the Chief of the FS describing a single partnership among FS, NFF, and Subaru -- not an NFF/Subaru partnership where FS is the beneficiary. FS employees accompanied the acting NFF president to briefings describing the projected benefits of the partnership arrangement. Smokey Bear attended the Seattle International Auto Show and the Philadelphia International Auto Show and is scheduled to attend nine additional auto shows and two press conferences. Further, at the Philadelphia International Auto Show, the Subaru exhibit included a Forester vehicle bearing the FS shield and a decal declaring it to be the "Official Vehicle of the National Forest Foundation." The Subaru Forester, bearing the FS shield, is scheduled to appear at a total of 51 auto shows across the country. (See exhibit F for a listing of scheduled appearances.) FS officials have acted in accordance with the

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<sup>2</sup> Forest Leader, The Quarterly Newsletter of the NFF, Fall, 1997, pg. 7.

<sup>3</sup> Forest Service Manual 1580.5, W.O. Amendment 1500-95-3, effective April 21, 1995, pg. 13.

<sup>4</sup> Agriculture Property Management Regulations (APMR), Subpart 104-43.8003 (b), effective December 19, 1986.

<sup>5</sup> Departmental Regulation 1470-1, Graphic and Exhibit Design, Section 7a, Endorsements, Commercial References and Use of Brand Names, effective November 12, 1986.

agreement, even though the written agreement was not signed by a representative of FS.

FS policy contained in the FS manual permits a partnership arrangement only in cases where "the cooperator's involvement would not directly further its or others profit interest in the instant agreement." The existing agreement with NFF and Subaru violates this policy, as the agreement includes as a primary purpose to "help promote and showcase its [Subaru's] product lines." By its actions, FS has demonstrated that it is party to this agreement. Promoting the Subaru Forester furthers the auto manufacturer's profit interest and, therefore, violates the FS policy on partnership agreements. Other FS policy dealing with profit interests is included in the March 1997 FS Partnership Guide: "it would be inappropriate to enter into another agreement where the cooperator's direct benefit would further its monetary interests."<sup>6</sup> Since the value of the Subaru donation is directly tied to the level of auto sales to NFF members and partners, Subaru intends for the agreement to further its monetary interests.

The 34 Subaru Forester vehicles in use by FS employees on the national forests bear the official FS shield, as well as a large seal designating the Forester as the "Official Vehicle of the National Forest Foundation". (Figure 1 shows a picture of the Forester, to include the FS shield on the vehicle door and the "Official Vehicle of the National Forest Foundation" decal prominently displayed on the rear window.) These markings constitute a "potential advertising or other commercial benefit" to Subaru and are prohibited by APMR.<sup>7</sup> The markings also violate the departmental policy to avoid endorsements, directly or indirectly, of any commercial enterprise or product.<sup>8</sup> FS is prohibited from engaging in any activities designed to promote and showcase any manufacturer's product over another. The OGC raised that issue in its opinion letter dated July 25, 1997, concerning the proposed agreement. (See exhibit C for the full text of the opinion.) Nevertheless, the purpose of promoting the Subaru Forester has continued to be a primary purpose for the agreement. For example, the agreement between Subaru and NFF included a provision that Forester vehicles would be utilized in national forests and the NFF would use its best efforts to cause Forester vehicles to be used

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<sup>6</sup>1997 Partnership Guide, Forest Service, pg. 9

<sup>7</sup> APMR, op.cit.

<sup>8</sup> Departmental Regulation 1470-1, op.cit.

where they will gain the most visibility.

FS officials were aware that product promotion was a primary purpose of the agreement and participated in briefings that describe Subaru's marketing considerations. As part of those briefings, a document titled "Subaru Forester Sites" was provided. (See Exhibit D for a copy of this document.) This document explained that the designated locations "provide the most visibility in Subaru's prime marketing areas." The analysis is written in terms of product promotion potential. Emphasis was placed on Subaru's major markets, the northern areas. For example, Subaru's document shows that two Foresters are assigned to the Arapaho-Roosevelt National Forests because of its close proximity to Denver and the ski sites of Breckenridge, Keystone, Copper Mountain, and many other popular ski resorts, with 28 million annual recreation visits. Each of the other sites selected to receive a Forester was described in similar terms. In all cases, these Subaru Foresters will have the FS seal and a large decal designating the Forester as the "Official Vehicle of the National Forest Foundation" on each side of the vehicle.



Figure 1

Figure 1 shows a Subaru Forester bearing the official FS shield and the decal naming it the official vehicle of the National Forest Foundation as exhibited at the Philadelphia International Auto Show,

January 31 through February 8, 1998. Exhibition of the vehicle bearing the FS shield further demonstrates that Subaru considers the endorsement value of the FS shield and the "Official Vehicle" decal to be significant. FS policy<sup>9</sup> specifically prohibits this use of the FS shield. The Partnership Guide states, in part, "A partner can use agency symbols if the focus of an advertisement is conservation education, America's Great Outdoors, or similar sanctioned agency themes. For example, a car manufacturer can show a Forest Service employee stepping into a vehicle with the shield on the door if the message is 'Take care of America's great outdoors,' but not if the message is 'Buy this product.'"

The APMR allows the Department to indicate that a gift to the USDA (in this case, the use of the Subaru Forester) has been given by a donor (Subaru, via the NFF). However, "The acceptance of such gifts shall in no way imply an endorsement of the gifts or the giver."<sup>10</sup> The numerous written sources citing "high visibility" as a factor in the vehicle placement along with the condition that the FS seal and the decal designating the Forester as the "Official Vehicle of the National Forest Foundation" show that Subaru considered the implied endorsement to be an integral part of the arrangement with the NFF and the FS. Display at the auto shows of the vehicle bearing the FS shield and the "Official Vehicle" decal further demonstrates the degree to which Subaru considered FS's endorsement to be important. Based on the schedule provided by the NFF, the Subaru Forester bearing the FS shield and "Official Vehicle" decal was scheduled to be displayed at 51 major auto shows across the United States. Commercial benefit is so prominent a feature that it should have been apparent to the FS that an endorsement was the end result of this arrangement, as carried out. However, if FS had questioned whether the arrangement constituted an implied endorsement, the FS should have referred to the OGC opinion which warned of the suggestion of endorsement. The arrangement, as currently structured and carried out, violates departmental regulations and policy and should be canceled by the FS.

#### RECOMMENDATION NO. 1

Cancel further FS participation in the NFF/Subaru agreement. If Subaru allows continued use of the donated vehicles, ensure that the "Official Vehicle" decal is removed and that the vehicles are distributed in the manner that most benefits the FS. Advise Subaru that the display at auto

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<sup>9</sup>1997 Partnership Guide, Forest Service, pg. 21

<sup>10</sup>APMR, op. cit.

shows of the Forester vehicle bearing the FS shield should be suspended immediately.

#### **FS RESPONSE**

FS officials agreed to ensure that Forester vehicles appearing at auto shows do not bear the FS shield and to remove the "Official Vehicle" decal from all vehicles donated to the FS by the NFF. Further, the FS agreed to cancel its MOU with the NFF and initiate discussions to renegotiate the agreement. FS has also requested that the NFF modify its agreement with Subaru to reflect the changes agreed upon when the FS/NFF agreement had been negotiated. By taking these steps, FS officials believed that cancellation of further participation in the partnership will not be necessary.

#### **OIG POSITION**

We will be able to identify the steps necessary to reach management decision on this recommendation once we review the two renegotiated agreements.

#### **THE NFF MADE INAPPROPRIATE COMMITMENTS OF U.S. GOVERNMENT PROPERTY**

#### **FINDING NO. 2**

branding on all NatureWatch collateral materials, such as displays, web sites, brochures, etc. However, Smokey Bear and NatureWatch are property of the United States government. Unauthorized use of Smokey Bear is a crime.<sup>11</sup> The NFF is not a branch or agency of the government and has no independent authority to commit Smokey Bear or NatureWatch.

Our review showed that FS officials were aware that the NFF had inappropriately committed U.S. government property in its agreement Subaru. Although OGC had identified this problem prior to execution of the written agreement, FS has not taken action to correct it. We also noted that the agreement calls for Smokey Bear to distribute

The signed agreement calls for Smokey Bear to appear at a minimum of ten major auto shows per year and for Subaru to become a sponsor of NatureWatch and to receive

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<sup>11</sup> 18 U.S.C., Section 711

literature about NFF's role in restoring forests that have been adversely impacted by wildfire. This use of Smokey Bear violates longstanding FS policy that Smokey Bear is to be used only in the context of wildfire prevention and only at events that focus on outdoor fire safety or wildland fire prevention. Auto shows do not focus on outdoor fire safety or wildland fire prevention. Rather they focus on car manufacturers and their products, and are therefore improper venues for Smokey.

a. Smokey Bear. Smokey Bear is the second best recognized character in the United States and is widely respected for his well-known message "Only you can prevent forest fires." The U.S. government's property rights in the trademark and the service mark are valued. FS guidance for Smokey Bear emphasizes the need for vigorous protection of Smokey Bear and his message to ensure that his integrity is maintained. The use of Smokey Bear to appear at major auto shows and distribute literature with Subaru branding is inappropriate and contrary to published guidelines.<sup>12</sup> Further, the partnership agreement, as currently structured, increases the likelihood of Smokey Bear's appearance in advertisements for Subaru products.

The key to Smokey's worldwide recognition is the positive image that has been promoted since the inception of the program. FS has developed and implemented uniform standards for all aspects of Smokey's image and appearance. Published guidelines caution that it is inappropriate for Smokey Bear to appear at "Christmas parties, summer picnics, Halloween parties, Job Fairs, the Combined Federal Campaign, or any situation that might compromise Smokey's integrity or give the appearance of impropriety."<sup>13</sup> Smokey's appearance at major auto shows falls into this category of appearance and is, therefore, improper. Recently issued FS partnership guidelines reinforce this conclusion, as the guidelines state, "Smokey Bear can be exhibited only at events that focus on outdoor fire safety or wildland fire prevention."<sup>14</sup> Major automobile shows do not focus on outdoor fire safety or wildland fire prevention. Rather, they focus on car manufacturers and their products, and are therefore improper venues for Smokey. If Smokey Bear distributes such literature bearing Subaru branding at the auto shows, he is directly involved in promoting Subaru. This linkage is exacerbated by the presence of the Forester vehicle bearing the FS shield.

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<sup>12</sup>1997 Partnership Guide, Forest Service, pg. 21, et al

<sup>13</sup>Smokey Bear Guidelines, Forest Service, 1991, pg. 16

<sup>14</sup> 1997 Partnership Guide, Forest Service, pg. 19.



Smokey Bear's message of forest fire prevention has remained consistent since his creation in 1944. The Subaru agreement calls for a change in that message. In addition to fire prevention literature, the agreement calls for Smokey to distribute literature about the NFF's role in restoring forests that have been adversely impacted by wildfire. This literature will bear Subaru branding. FS regulations and published FS guidance state that Smokey's message is to be limited to public education concerning the prevention of forest fires. Smokey Bear cannot endorse or support issues or causes other than fire prevention and cannot represent FS for causes other than fire prevention. Thus, distribution of information about the NFF and its activities is an improper role for Smokey.

Although we did not identify any print advertisements directly linking Smokey Bear and Subaru, the partnership among FS, NFF and Subaru increases the likelihood that this could occur. A FS employee reported an instance where a local Subaru dealer had given instructions to use Smokey Bear in a newspaper advertisement for the Forester. When the FS employee was contacted by the local newspaper to obtain Smokey Bear artwork for use in the ad, she properly advised the newspaper on the use of Smokey and the ad did not run. Although this improper use was averted, it demonstrates the manner in which the close relationship among Subaru, NFF, and FS increases the likelihood that local ad campaigns will inappropriately use Smokey Bear to promote the Forester.

During the course of our review, we discussed with FS officials our concerns about the way Smokey Bear was to be used at auto shows involving Subaru. Specifically, we discussed a planned promotion at the auto shows where Smokey Bear would have a instant photograph picture taken with a child. The child would then be directed to the Subaru booth to receive a magnetic picture frame for his picture. The magnetic picture frame bears the legend "Subaru, The Beauty of All-Wheel Drive" and is decorated with colorful bear tracks. When the child places the Smokey Bear photograph into the picture frame, the resulting effect is a picture of Smokey Bear and the child captioned with the Subaru trademark and legend. The bear tracks on the frame reinforce the idea that the frame is to be used with the picture of Smokey. A disposable insert to the frame includes the Subaru web page address, the NFF logo, and the phrase "Partners in Conservation."

Subsequent to our discussion, a senior FS official issued a letter to the Executive Director of the NFF advising that the planned promotional activity involving the picture frames was not approved and emphasizing that Smokey Bear cannot endorse or give the appearance of endorsing any product. In a separate letter, the

official instructed the Regional Foresters to monitor all Smokey Bear events to assure compliance and to document the results of the monitoring for future review. (See exhibit E for copies of these letters.) These actions are appropriate. However, when we attended the Philadelphia International Auto Show after the issuance of the letters, we found that Smokey Bear appeared at the auto show and the picture frames were distributed to the public, in apparent disregard for the instructions of the senior level official. Since that time, the senior FS official with responsibility for Smokey Bear licensing has issued an instruction stopping all participation by Smokey Bear at auto shows until questions surrounding the FS, NFF, and Subaru partnership are resolved.

b. NatureWatch. The FS conservation education program, NatureWatch, is comprised of 820 viewing areas created in partnership with a variety of organizations, to include hunting, fishing, conservation and environmental groups, industry, youth organizations, private businesses, individuals, and Federal and state agencies. As a covenant and responsibility of the NFF, the written partnership agreement between NFF and Subaru calls for Subaru to be a sponsor of NatureWatch and to receive branding on all (emphasis added) NatureWatch collateral material, to include displays, web sites, brochures, etc. However, the NFF does not own NatureWatch, is not an agent of the FS, and should not make commitments on behalf of the FS.

The commitment to place Subaru branding on all NatureWatch collateral materials is a far-reaching one. If the agreement is executed as it is written, the Subaru logo will appear on 820 wildlife viewing areas that Subaru did not help to create. For example, Taylor Creek Viewing Bridge and Stream Profile Chamber, which allows visitors to watch spawning salmon, was funded by the California Tahoe Conservancy, a non-profit organization, and the FS. To allow Subaru branding on displays related to the bridge and profile chamber when Subaru had not provided any financial or in-kind support to the project, is misleading to the public. Further, to the degree that the structures were built with appropriated funds, Subaru is creating goodwill for itself on the basis of a popular attraction actually funded by the American taxpayer.

#### RECOMMENDATION NO. 2A

Advise the NFF to refrain from further commitments of U.S. Government property, specifically Smokey Bear and the NatureWatch program.

### FS RESPONSE

FS officials stated that they had advised the NFF to modify the contract with Subaru to eliminate any further commitment or requests for Smokey Bear to appear at major auto shows and to refrain from any commitments or branding of NatureWatch materials.

### OIG POSITION

We accept the management decision for this recommendation.

### RECOMMENDATION NO. 2B

Do not allow Subaru branding on NatureWatch materials with which they are not involved.

### FS RESPONSE

FS officials stated that they had advised the NFF to refrain from any commitment or branding of NatureWatch materials.

### OIG POSITION

We can accept the management decision for this recommendation when we receive written assurance that Subaru branding will not appear on NatureWatch materials unless Subaru has made a significant contribution in the specific NatureWatch project.

### COST EFFECTIVENESS OF PRINT ADVERTISING IS QUESTIONABLE

The agreement between the NFF and Subaru calls for Subaru to develop print advertisements to promote the relationship between the NFF and Subaru. Although Subaru has purchased advertising space in several popular magazines, consumer response to the NFF, as a result of the ad, has been minimal.

### FINDING NO. 3

For example, as of December 18, 1997, an advertisement in the November issue of Smithsonian magazine had generated only one \$20 membership and five requests for information. Ads placed in recent issues of Backpacker, Field and Stream, National Geographic, Outside, and People have not resulted in any donations or memberships to the NFF as of December 18, 1997.

Enabling legislation authorizes FS to make funding available to the NFF to match, on a one-for-one basis, private contributions made to the NFF. The NFF provides lists of donors and the applicable donation amount to the FS which then matches the donation by transferring funds to NFF.

Costs for advertising campaigns can be high and the results to the NFF for this campaign, to date, have been minimal. For example, the cost for the advertisement in Smithsonian was valued by Subaru at \$62,100. Subaru's overall costs for ads in the NFF Membership Drive/Advertisement campaign have ranged from a low of \$18,000 to as much as \$84,300 for a single issue, totaling expenditures of \$864,167. The NFF intends to claim for matching from FS, only a prorata share of the cost of these advertisements. For example, NFF intends to request FS matching for about \$7,450 on the Smithsonian ad, as about 12 percent of space related to the NFF. The advertising campaign, however, has generated only \$580 in membership fees and 56 requests for information from the NFF. Given the low consumer response to these magazine advertisements, we believe that the FS and NFF should carefully consider the cost effectiveness of print advertising as a means of developing a membership base. FS should not provide matching funds unless the agency determines that the advertising campaign is likely to assist the agency and the NFF in meeting its overall objective of providing additional revenue for forest related activities.

### RECOMMENDATION NO. 3

Perform a documented assessment of the print advertising campaign and do not provide matching funds for print advertising expenditures unless a clear determination can be made that the expenditures will result in additional

revenues for forest related activities.

#### FS RESPONSE

The FS response did not address this recommendation but stated the agency's intent to respond in a complete and comprehensive manner in the future.

#### OIG POSITION

We will be able to accept the FS management decision on this issue when we receive details on how the agency will address the recommendation and associated time frames.

### **Terms of Agreement**

This Agreement is entered into between the National Forest Foundation, (herein referred to as NFF), a private nonprofit foundation created by public law 101-593 and domiciled in the District of Columbia, having its principal place of business at 1099 14th Street, NW, Suite 5600W, Washington, DC 20005-3419 and Subaru of America, Inc., (herein referred to as SOA), a New Jersey corporation having its principal place of business at Subaru Plaza, 2235 Route 70 West, Cherry Hill, NJ 08002.

Whereas, NFF desires to enter into an agreement that will benefit the nation's forests; and

Whereas, SOA desires to enter into an agreement that will help promote and showcase its product lines.

Therefore, in consideration of the mutual covenants and conditions herein contained, NFF and SOA agree as follows:

#### **I. Definitions:**

- A. "Marks" mean official names and logos.
- B. "Forester Fund" means a fund to be set up by NFF to support projects on the nation's forests. Appropriate program administration and management expenses may be drawn from the fund.
- C. "Added Security Basic Maintenance Contract" means the maintenance plan provided by SOA. This plan pays for labor and parts for recommended maintenance on Subaru vehicles for 3 years or 45,000 miles as outlined in the attached agreement labeled as 'Exhibit A.'

#### **II. Confidentiality**

- A. The terms of this Agreement are to be held in strictest of confidence. Any release of information relating to the terms of this Agreement shall be agreed to by both parties.
- B. NFF covenants and agrees that NFF and its affiliates:
  - 1) Shall keep confidential any and all information concerning SOA's business and operation which becomes known to NFF by reason of the performance of NFF services including, but not limited to, the terms and conditions of this Agreement; Nothing shall prevent the disclosure of information to the U.S. department of Agriculture or Congress.

- 2) Shall not disclose any confidential information to any person outside of the company's employ, unless to do so is required in connection with the performance of services, and in such event NFF agrees to obtain from any such suppliers a similar agreement to maintain such information as confidential; and
- 3) Shall obtain from NFF employees, who in the performance of services on SOA's behalf may become privy to any such confidential information, a similar covenant and agreement to keep confidential all such information.

### III. Covenants and Responsibilities of Subaru of America:

- A. Upon execution of the Agreement by both parties, SOA will donate \$25,000 to NFF to initiate the *Forester Fund*. SOA will donate \$25,000 to the *Forester Fund* for each additional year of this contract.
- B. SOA will donate an additional \$150 to the *Forester Fund* each time a NFF member in good standing for at least three (3) months or employee or a member in good standing of one of NFF's conservation, corporate, or government partners purchases a new Subaru vehicle. Any new NFF partner must be approved by SOA to become eligible for any Subaru incentive. NFF is responsible for distributing the Added Security Basic Maintenance Plan purchase incentive coupons to the eligible members, employees or affiliates' members or employees. NFF will log all coupons sent to eligible members and employees. Disbursement of funds and reporting requirements will be in accordance with Paragraph V (below). Exhibit B attached hereto and made a part of this Agreement lists NFF's current conservation, corporate and government partners. As NFF develops new partners, it may, at reasonable intervals and in writing, add new partners (mutually agreed upon by both parties) to the list.
- C. SOA will provide each individual who purchases a Subaru vehicle under the provisions of Paragraph III, B, (above) with a free "Added Security Basic Maintenance Contract."
- D. SOA will provide NFF with use of 34 current model year Subaru *Forester* vehicles ("U.S. Forest Service" vehicles) in accordance with the terms and conditions of Exhibit C, Memorandum of Understanding, attached hereto and made a part of this Agreement. SOA shall also provide NFF with the use of one current model year Subaru *Forester* vehicle ("NFF vehicle") in accordance with the terms and conditions of Exhibit D, Borrowed Car Agreement, attached hereto and made a part of this Agreement. SOA will register this vehicle and provide insurance for the vehicle utilized by the National Forest Foundation. When the vehicles are received at the forest-level, the Forest Service Shield will be placed on both front doors of each vehicle. SOA will develop an additional decal identifying the *Forester* as the "Official Vehicle of the National Forest Foundation." NFF will be responsible for ensuring that decals are properly installed at delivery and removed prior to the vehicles being returned to the dealer.

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**EXHIBIT A****AGREEMENT BETWEEN SUBARU AND THE NFF**

- E. SOA will donate a 12-month lease of a *Forester* vehicle for NFF to use as the Grand Prize at its annual sporting days fundraising event. Winner will be responsible for all tax, tags, insurance and other fees associated with registering the vehicle. The donation will also include a kayak, a mountain bike and a pair of skis.
- F. Once a year during the term of the Agreement, SOA will publish a feature article about National Forests and the National Forest Foundation in *DRIVE* Magazine, the communication to Subaru owners. This article will include a NFF membership application form.
- G. SOA agrees to work with NFF to explore opportunities for the parties to promote their relationship at major auto shows. In accordance with governing standards, Exhibit E attached hereto and made a part hereof this Agreement, Smokey Bear will attend a minimum of ten shows per year designated by SOA and distribute literature about Fire prevention and NFF's role in restoring forests that have been adversely impacted by wildfire. This literature will bear SOA branding when distributed at SOA events. SOA will be responsible for Smokey Bear's travel expenses when appearing at SOA events. Smokey Bear must adhere to the SOA Travel policy outlined in Exhibit "F" attached hereto and made a part hereof this Agreement.
- H. SOA will develop an internet page discussing NFF and its relationship with SOA. The page will include NFF membership information or a membership form. SOA will also provide "hotlinks" to NFF's web site. Subaru will receive branding on NatureWatch web site page as well as NFF site.
- I. SOA will develop print advertisements featuring the *Forester* and promoting the relationship between SOA and NFF. Advertisements may include NFF's toll-free number. All periodicals will be mutually agreed upon by both parties.
- J. SOA may consider opportunities to air segments about the National Forests and NFF on *Subaru American Outback*, SOA's outdoor show that airs on ESPN2.

**IV. Covenants and Responsibilities of the National Forest Foundation:**

- A. *Forester* vehicles will be utilized in National Forests; NFF will use its best efforts to cause *Forester* vehicles to be used where they will gain the most visibility. Specific locations will be mutually agreed to by both parties.
- B. During the term of this Agreement, SOA shall be the exclusive automobile partner of NFF.
- C. SOA's Marks, as well as reference to the *Forester* being the "Official Vehicle of the National Forest Foundation," will appear on trail maps, brochures, literature, etc. produced and/or sponsored by NFF in accordance with Paragraph VIII. NFF will promote the relationship between the NFF and SOA everywhere SOA and NFF mutually agree upon.

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**EXHIBIT A****AGREEMENT BETWEEN SUBARU AND THE NFF**

- D. SOA will have full rights to utilize the NFF's Marks in advertising, promotional items and promotional events. Use of Marks will be in accordance with Paragraph IX (below).
- E. SOA shall have the rights to NFF's membership mailing list. NFF will make available to SOA the mailing lists of all NFF affiliates pending their approval. Specific use of lists will require mutual agreement of all parties.
- F. NFF agrees to highlight its relationship with SOA on the NFF Web site and provide a "hotlink" from its web site to SOA's site (Subaru.com).
- G. Because of SOA's desire to associate with a national, educationally oriented program, it shall be a sponsor of NatureWatch, and the national NatureWatch coordinator will receive one of the *Forester* vehicles referenced in Paragraph III, D (Above). Subaru will receive branding on all NatureWatch collateral materials such as displays, brochures, Web sites, etc.
- H. SOA requests right of first refusal on other sponsorship and collaborative programs and activities that might be of interest. Therefore, NFF agrees to advise SOA of other opportunities that may arise, thus giving SOA first rights.

**V. Payments and Reports**

- A. Within thirty (30) days following the last day of the months March, June, September, and December (calendar quarter), SOA will forward to NFF the funds to be donated for each Subaru vehicle purchased under the provisions of Paragraph III, B (above). SOA agrees to keep full and accurate records to show the basis for said donations. This report shall include a summary reflecting the numbers of coupons redeemed for the Added Security Basic Maintenance contract by members of each organization listed in Exhibit B and any newly approved organizations.
- B. SOA agrees to provide NFF with written documentation specifying the fair market value of the total sponsorship paid to the NFF. This includes cash as well as the in-kind donation components outlined in Paragraph III.

**VI. Term**

Notwithstanding anything aforesaid to the contrary, the initial term of this Agreement shall be for two (2) years from July 1, 1997. Subaru has the right of first refusal to renew this Agreement for all subsequent years.

**VII. Termination**

In the event of breach or default by either party of any obligation under this Agreement, the other party, at sole discretion, may cancel the Agreement by giving the other party not less than thirty (30) days written notice.



## VIII. Patent, Copyright, Trademarks and Trade Secrets

The registration symbol (R) shall appear adjacent to the name "Subaru", Legacy, Subaru SVX, Impreza, "The Beauty of All Wheel Drive", Brighton, and Outback in connection with their use pursuant to this Agreement. The trademark symbol (TM) shall appear adjacent to the name "Forester" and "Master the Mountain" in connection with its use pursuant to this Agreement. Use of the "Forester" and "Master the Mountain" marks shall not create in favor of any right, title or interest in and to such marks, and NFF agrees not to represent that it has any ownership in the "Forester" and "Master the Mountain" marks or to use the marks for any purposes other than those provided in the Agreement. Following are registered trademarks which must be labeled with TM: Hill-Holder, Forester, and Master the Mountain.

## IX. Appropriate Use of Marks

Whereas, both parties have an ongoing interest in seeing their Marks used in a manner appropriate to professional standards, each time a Mark is used, the other party shall be provided a sample of proposed use for review and approval. Any proposed change in previous use shall be subject to approval. Neither party shall alter, dilute, or otherwise misuse the other party's Marks. The reviewing party shall promptly review proposed use of Marks and notify the other party of its actions. Approval shall not be unreasonably withheld.

## X. Indemnification

SOA agrees to indemnify, defend and hold harmless NFF, its subsidiary and affiliated corporations and their respective directors, officers, employees, agents, successors and assigns, from and against any and all claims, damages, liabilities, losses, government proceedings and costs and expenses, including reasonable attorney's fees and costs of suit, arising from actions brought by third parties against NFF as a direct result of any breach of this contract by SOA.

NFF agrees to indemnify, defend and hold harmless SOA, its parent, subsidiary and affiliated corporations and their respective directors, officers, employees, agents, successors and assigns, from and against any and all claims, damages, liabilities, losses, government proceedings and costs and expenses, including reasonable attorney's fees and costs of suit, as a direct result of any breach of this contract by NFF, its subsidiary and affiliated corporations and their respective directors, officers, employees, and agents.

CPD.

**XI. Modifications/Assignment**

This Agreement may not be modified or amended except in writing signed by both parties, through their authorized agents. This Agreement and any rights herein granted are personal to SOA and NFF and shall not be assigned, sub-licensed or encumbered without the consent of both parties.

**XII. Insurance**

NFF agrees to maintain the following insurance coverages and amounts throughout the term of this Agreement:

- General Liability Including Contractual Liability: \$1 million per occurrence, \$2 million aggregate.
- Workers Compensation: Statutory Limits.
- Employers Liability: \$1 million per occurrence.

All coverages shall be with companies having an A.M. Bests rating of A- or higher. NFF shall include Subaru of America, Inc., its Parent and Subsidiaries as Additional Insureds of its general liability policy. NFF shall provide SOA with a certificate of insurance evidencing the above coverages and conditions. The certificate shall also state that NFF will provide 30 days written notice of any material changes to said coverages.

**XIII. No Agency**

SOA acknowledges that it is not an agent of NFF and likewise NFF acknowledges that it is not an agent of SOA. Neither party shall act or hold itself out as an agent of the other.

**XIV. Severability**

If any provision of this Agreement shall be declared invalid for any reason, such decision shall not effect the validity or enforcement of the remainder of the Agreement. In the event any material provision of this Agreement is declared invalid, NFF reserves the right to immediately terminate the Agreement pursuant to the terms set forth herein.

**XV. Integration**

This Agreement constitutes the entire agreement between the parties, and no modifications or revisions hereof shall be of any force or effect unless the same are in writing and executed by both parties hereto. This Agreement shall be construed in accordance with the laws of the District of Columbia.

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EXHIBIT A

AGREEMENT BETWEEN SUBARU AND THE NFF

VI. Principal Contacts

All notices should be sent in writing to the following contacts at their corresponding address.

National Forest Foundation  
Terry Austin-Vice President  
1099 14th Street, NW  
Suite 5600W  
Washington, DC 20005-3419  
Phone: (202)501-7697  
Fax: (202)219-6585

Subaru of America, Inc.  
Tim Mahoney-Director of Marketing  
Subaru Plaza  
2235 Route 70 West  
Cherry Hill, NJ 08002  
Phone: (609)488-8500  
Fax: (609)488-3274

National Forest Foundation

Name: Terry W. Austin

Title: Acting President

Date: July 22, 1997

Subaru of America, Inc.

Name: Tim Mahoney

Title: NFA President & C.E.O.

Date: July 16, 1997

MEMORANDUM OF UNDERSTANDING BETWEEN SUBARU,  
NFF AND THE FS

## Exhibit C

## I. Title

MEMORANDUM OF UNDERSTANDING  
between  
Subaru of America, Inc., National Forest Foundation  
and  
USDA Forest Service

- II. Opening Statement: This Memorandum of Understanding (MOU) is entered into by and among Subaru of America, Inc. "SOA," the National Forest Foundation "NFF" and the USDA Forest Service, hereinafter referred to as "Forest Service."
- III. Purpose: The purpose of the MOU is to provide a framework for cooperation serving the mutual interests of the parties and the public.
- IV. Statement of Mutual Interests and Benefits: In consideration of the above premises, the parties agree that SOA shall provide NFF with 34 Subaru Forester vehicles "Vehicles." NFF, in turn, will make a gift of the use of these Vehicles for a period of two years to the Forest Service for use in its day to day operations serving the National Forests. Vehicles shall be marked with the standard Forest Service marks and insignias as well as a decal identifying the Forester as the "Official Vehicle of the National Forest Foundation."
- V. It is mutually agreed and understood by and among parties that:
- A. Vehicle Ownership and Risk of Loss: SOA shall transfer ownership and risk of loss for 34 Vehicles to the NFF. NFF, in turn, will transfer ownership and risk of loss of these Vehicles for a period of two years to the Forest Service. The Forest Service shall be provided with a Certificate of Origin ("COO") for each vehicle as proof of ownership. During the term of this agreement, SOA may choose to exchange any of these Vehicles for newer Vehicles using the same procedures as the original transfer.
- B. Vehicle Loss, Theft, Damage, Destruction: During its period of possession and ownership, Forest Service assumes all risk of loss to the Vehicle from any cause whatsoever and recognizes that SOA shall have no obligation to provide insurance of any kind on the Vehicles. The Forest Service agrees that at the end of its period of ownership, it will return the Vehicles in the same condition as received, except for normal wear and tear. The Forest Service agrees to notify NFF who, in turn, will notify SOA promptly of any event involving confiscation, loss, theft, damage or destruction of the Vehicle and to arrange and pay for all repairs necessary to bring the Vehicle back to its pre-accident condition using genuine Subaru parts. In the event that the Vehicle cannot be repaired, or the cost of repair exceeds 75% of its "Cost" (distributor cost of the vehicle, less 1% of for every 1,000 miles on the odometer) the Forest Service agrees to return the Vehicle and its COO to NFF and to reimburse NFF based on the Cost less 10%. NFF will return the Vehicle and its COO to SOA and reimburse SOA based on the Cost less 10%.
- C. Warranty Repairs: All warranty repairs, other than emergency repairs, must be performed by an authorized Subaru dealer.
- D. Termination: Any of the subject parties, in writing, may terminate this agreement in whole, or in part, at any time before the date of expiration. Upon such termination, the Forest Service agrees to transfer ownership of any Vehicles in its possession to NFF who, in turn, will, transfer ownership to SOA within thirty (30) days of notice of termination.

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**EXHIBIT B****MEMORANDUM OF UNDERSTANDING BETWEEN SUBARU,  
NFF AND THE FS**

- E. Participation in Similar Activities: This agreement in no way restricts the Forest Service from participating in similar activities with other public or private agencies, organizations, and individuals.
- F. Completion Date: This agreement is executed as of the last date shown below and expires on July 1, 1999 at which time it will be subject to review, renewal, or expiration. If this agreement is allowed to expire, the Forest Service agrees to transfer ownership of any Vehicles in its possession to NFF who, in turn, will transfer ownership to SOA within thirty (30) days of expiration.
- G. Principal Contacts: The principal contacts for this agreement are:
- |                      |                         |                                   |
|----------------------|-------------------------|-----------------------------------|
| Gerry Farmer         | Tim Mahoney             | Terry Austin                      |
| USDA Forest Service  | Subaru of America, Inc. | Nat'l Forest Foundation           |
| 201 14th Street SW   | 2235 Route 70 West      | 1099 14th Street, NW, Suite 5600W |
| Washington, DC 20250 | Cherry Hill, NJ 08002   | Washington, DC 20005              |
| (202) 205-1265       | (609) 488-8500          | (202) 501-7697                    |
- H. Non-Fund Obligor Document: This agreement is neither a fiscal nor a funds obligation document. Any provision of this agreement or endeavor involving reimbursement or contribution of funds among the parties to this agreement is subject to the availability of appropriations and will be handled in accordance with applicable laws, regulations, and procedures, including those for Government procurement and printing. Any endeavor among the parties which is not expressly provided for by the terms of this agreement will be outlined in a separate agreement that shall be made in writing by representatives of the parties, and shall be independently authorized by appropriate statutory authority. This agreement does not provide such authority. Specifically, this agreement does not establish authority for noncompetitive award to SOA of any contract or other agreement. Any contract or agreement for training or other services must fully comply with all applicable requirements for competition.
- I. Modification: Modification within the scope of this agreement shall be made by issuance of a bilaterally executed modification prior to any changes being performed.

**VI. Transition Statement and Signatures**

The parties hereto have executed this MOU on the last date written below.

Terry Austin  
Ronald E. Stewart  
Thomas J. Doll

August 8, 1997  
Date

August 11, 1997  
Date

AUGUST 12, 1997  
Date

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EXHIBIT C

OFFICE OF THE GENERAL COUNSEL OPINION ON THE MOU  
AMONG THE NFF, FS AND SUBARU OF AMERICA

JUL 25 1997

MEMORANDUM FOR MIKE DOMBECK  
CHIEF, FOREST SERVICE

IRWIN T. DAVID  
ACTING CHIEF FINANCIAL OFFICER

FROM: James Michael Kelly  
Associate General Counsel ~~James Michael Kelly~~

SUBJECT: Memorandum of Understanding Among the Forest  
Service, the National Forest Foundation, and  
Subaru of America

This memorandum responds to the referral of the draft Memorandum of Understanding ("MOU") among the USDA Forest Service ("FS"), the National Forest Foundation ("NFF"), and Subaru of America ("SOA") to this office for review and comment.

BACKGROUND

The NFF is a private, nonprofit foundation created by Public Law No. 101-593 and domiciled in the District of Columbia. One of the purposes of the NFF is to "encourage, accept, and administer private gifts of money, and of real and personal property for the benefit of, or in connection with, the activities and services of the Forest Service[.]"<sup>1</sup> SOA is a New Jersey corporation that distributes Subaru automobiles built by Fuji Heavy Industries, a Japan corporation. These automobiles are built in Japan and the United States.

SOA recently began distributing a new, all-wheel-drive vehicle called the "Forester." SOA and NFF saw an opportunity that might benefit both parties, and signed an agreement ("SOA/NFF agreement") to benefit the national forests and showcase the new Forester. The SOA/NFF agreement provides, among other things, the following:

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<sup>1</sup>Pub. L. No. 101-593, Title IV, §402(b)(1), codified at 16 U.S.C. 583j(b)(1).

OFFICE OF THE GENERAL COUNSEL OPINION ON THE MOU  
AMONG THE NFF, FS AND SUBARU OF AMERICA

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SOA/NFF Agreement

- SOA will donate 35 Forester vehicles to NFF;
- NFF will provide, in turn, 34 of these vehicles to the FS for use by FS personnel, with FS shields on the two front doors, in National Forests;
- SOA will donate \$25,000 per year to NFF;
- SOA will donate \$150 to NFF each time an NFF member in good standing, or a member in good standing of an affiliate of NFF, purchases a new Subaru vehicle;
- SOA will provide each of the above purchasers a free 3-year/45,000 mile maintenance agreement;
- SOA will donate a kayak, a mountain bike, a pair of skis, and a 12-month lease of a Forester vehicle, to NFF to use as prizes in an annual fundraising event.
- SOA will publish a feature article about National Forests in its DRIVE magazine.
- Smokey Bear will attend at least 10 major auto shows per year and distribute literature about fire prevention. This literature is to bear SOA branding. SOA will pay for Smokey Bear's travel expenses to these events.
- SOA will promote its relationship with NFF.
- SOA will be the exclusive automobile partner of NFF, and can promote the Forester as the "Official Vehicle of the NFF."
- SOA will have rights to NFF's membership mailing list.
- SOA will be a sponsor of NatureWatch, and the national NatureWatch coordinator will receive one of the vehicles provided to the FS.
- SOA receives right of first refusal to sponsor other NFF programs and activities.
- If either SOA or NFF breaches the agreement, each party agrees to indemnify the other party for any liability resulting from the breach.
- The agreement is valid for two years.

In addition to the above agreement, SOA and NFF have signed a MOU which FS also intends to sign. This MOU provides, inter alia:

SOA/NFF/FS Memorandum of Understanding

- The parties will cooperate to benefit the National Forests and "promote and showcase SOA's products."<sup>2/</sup>
- 34 of the vehicles provided by SOA to NFF will be turned over to the FS to be marked with FS marks and

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<sup>2/</sup>MOU §III.

- insignias, display a decal identifying the Forester as the "Official Vehicle of the National Forest Foundation," and be used in FS day-to-day operations serving the National Forests.
- The FS either will designate an existing program or design a new program that will carry Subaru in the title of the program.
- FS will indemnify SOA for "any and all claims, damages, loss or expenses attributable to bodily injury . . . and property damage arising from, or allegedly arising from use of" the 34 Forester vehicles by FS personnel.<sup>1/</sup>
- FS will make "every effort" to have any Forester vehicle repairs done by an authorized Subaru dealer.
- FS agrees to assume all risk of loss or damage to vehicles, and arrange all accident repairs through SOA.
- SOA may request vehicle return at any time. FS has 30 days to comply.
- The Agreement (MOU) can be terminated by either party at any time.
- FS will not participate in similar activities with other automobile or vehicle manufacturers.
- The agreement is valid for two years.

#### DISCUSSION

The two agreements raise a number of legal issues which merit discussion and investigation. For convenience, the two agreements will be discussed in turn.

#### SOA/NFF/FS Memorandum of Understanding

##### Product Promotion

One of the primary purposes of the MOU is "to promote and showcase SOA's products." The USDA has a general policy of avoiding endorsement of products. This policy is stated in Departmental Regulation 1470-1 as follows:

The USDA's policy is to avoid endorsements, directly or indirectly, of any commercial enterprise or product whenever possible. However, it is recognized that occasions may arise when mention of [a] specific commercial enterprise or produc[t] is in the public

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<sup>1/</sup>MOU SV.A. Indemnification



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interest or is difficult if not impossible to avoid.  
These occasions must be fully justified.<sup>1/</sup>

Although the FS uses vehicles from other manufacturers in its day-to-day operations, and this might at least suggest a product endorsement, these are occurrences that are "difficult if not impossible to avoid." It is another matter for the FS to sign an MOU with a vehicle distributor, when the stated purpose is "to promote and showcase" that distributor's product. The United States Government should not engage in any activities designed to promote and showcase any manufacturer's product over another. There is nothing preventing SOA and NFF from making such an agreement between themselves, however, as a matter of policy, the FS should not be agreeing to promote or endorse any commercial product.

#### Indemnification

The Comptroller General ("CG") consistently has held that, absent specific Congressional authorization, Federal agencies may not enter into indemnification agreements which subject the United States to indefinite liabilities. In one case the Park Police sought to sign memoranda of understanding with local law enforcement agencies that included an indemnification clause. The CG ruled the Park Police could not include such an indemnification in the MOUs.<sup>2/</sup> These agreements violate the Antideficiency Act<sup>3/</sup> because "it can never be said that sufficient funds have been appropriated to cover the contingency."<sup>2/</sup> Although the potential liability can be mitigated by inserting words limiting the liability to "appropriations available at the time a loss arises," the CG "viewed such a provision in the past as less than ideal because it may have potentially disastrous fiscal consequences for the agency."<sup>1/</sup>

#### Vehicle Repairs

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<sup>1/</sup>DR 1470-1, November 12, 1986.

<sup>2/</sup>Comp. Gen. B-242146, 1991 WL 200162 (C.G.) (1991).

<sup>3/</sup>31 U.S.C. § 1341(a).

<sup>2/</sup>Id. at note 5.

<sup>1/</sup>Id.

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In the MOU, the FS agrees to make "every effort" to have vehicle repairs made "by an authorized Subaru dealer,"<sup>12</sup> and further agrees that "[a]ll accident repairs must be arranged through SOA."<sup>13</sup> An agreement of this type may violate current FS vehicle repair contracts that may have been awarded as requirements contracts. Requirements contracts provide for no guaranteed minimum amount of work, but the Government promises to order all of its requirements from the contractor. Automobile repair, a type of service needed on an uncertain and unscheduled basis, would be the type of service for which a requirements contract might be used. Unless it is certain that the FS has no such contracts, it would be unwise for the FS to agree to have vehicles repaired only at Subaru dealers.

SOA Exclusive Participation

In the MOU, the FS agrees not to participate in similar activities with any public or private agency, organization, or individual in the "automobile or vehicle category."<sup>14</sup> Because "similar activities" is not defined, it is unclear to what the FS is agreeing. Is the FS agreeing not to use any other vehicles on forest roads? The section might be interpreted to mean the FS cannot accept any other donated vehicles for FS use. Perhaps the agreement is limited to four-wheel vehicles, or four-wheel-drive vehicles. The MOU is vague enough that it is not clear to what restrictions the FS is agreeing.

SOA/NFF Agreement

As a private corporation, NFF may sign agreements with whomever it chooses and does not need USDA approval. Yet, as a private corporation, NFF cannot bind the FS to agreements with third parties. There are a number of essentially contractual terms in the SOA/NFF agreement that appear to commit the FS to perform. SOA also, as a private corporation, may not provide gifts to FS employees except within strict limitations. The following are some of the problems raised.

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<sup>12</sup>MOU V.C. Maintenance and Mechanical Repairs.

<sup>13</sup>MOU V.D. Vehicle Confiscation, Loss, Theft, Damage, Destruction.

<sup>14</sup>MOU SV.G. Participation in Similar Activities.

Smokey Bear Appearances

In the SOA/NFF Agreement, the two parties agree that Smokey Bear will appear at a minimum of 10 major auto shows per year and distribute literature about fire prevention bearing SOA marks. There seems to be a misunderstanding regarding property rights. Smokey Bear is the property of the United States Government,<sup>12/</sup> and as such cannot be used without permission of the Chief of the Forest Service. Unauthorized use is a crime.<sup>12/</sup> NFF is not a branch or agency of the Government; it is a private corporation. NFF may seek FS permission for Smokey Bear appearances, but they have no independent authority to commit Smokey Bear to an appearance and should refrain from making such misleading promises.

The SOA/NFF agreement also commits SOA to pay for the travel expenses of Smokey Bear, and requires Smokey Bear to adhere to the travel policy of SOA. This provision is not problematic if the intent is for an NFF employee to wear (with FS permission) a Smokey Bear costume. However, there are Smokey Bear FS employees; these employees may not accept travel expenses which amount to a gift "because of the employee's official position."<sup>12/</sup> There is an exception to this prohibition that allows agencies to accept payment of travel expenses. However, that exception applies only for an employee to attend a "meeting or similar function relating to the official duties of the employee,"<sup>12/</sup> and it is questionable whether an automobile show meets the standard.

Maintenance Contract

SOA agrees to provide free an "Added Security Basic Maintenance Contract"<sup>12/</sup> to any NFF member, NFF partner, or employee of a member or partner. This apparently includes FS employees.<sup>12/</sup> If an FS employee also is a member of one of NFF's other partners, there should be no problem with receiving the

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<sup>12/</sup>16 U.S.C. 580p-1(1).

<sup>12/</sup>18 U.S.C. §711.

<sup>12/</sup>5 CFR §2635.202(a)(2).

<sup>12/</sup>31 U.S.C. §1353(a).

<sup>12/</sup>SOA/NFF Agreement, III.C.

<sup>12/</sup>SOA/NFF Agreement, Exhibit B.

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maintenance contract. However, as stated above, except in limited circumstances, Federal employees may not receive gifts from outside sources given because of the employee's official position,<sup>11/</sup> even if that "official position" is merely being an employee of FS. Although the SOA/NFF agreement does not indicate the maintenance contract value, it provides for three years' (or 45,000 miles) free parts and labor for Subaru recommended vehicle maintenance and is almost certainly worth more than nominal value.

RECOMMENDATIONS

Regarding the MOU which SOA and NFF already have signed, we recommend that FS not sign this agreement. In its present form the MOU contains a purpose (product promotion) which is inconsistent with Department policy, an indemnification agreement to which FS cannot agree legally, and a number of commitments which raise legal concerns.

As stated earlier, it is a USDA policy not to endorse a specific product. Promoting the Subaru Forester as the "Official Vehicle of the NFF" already presents a situation that easily might be construed by the public as meaning that the Subaru Forester is the official vehicle of the Forest Service. This misconception would be bolstered if the FS were to sign an agreement with SOA, one of the primary purposes of which is to promote Subaru products. The essential purposes of these agreements can be met by using two MOUs to define more clearly that the FS is not promoting Subaru products. NFF could accept the vehicles from SOA, and agree to use their best efforts to get the vehicles in use on FS roads. Separately, NFF could sign an MOU with FS to donate the vehicles to FS,<sup>12/</sup> provided the vehicles are used by FS personnel, on forest roads, with FS shields.

A less desirable, but legally defensible, alternative would be for all three parties to sign a rewritten MOU that incorporates the following changes:

- Delete the explicit language stating that product promotion is a purpose of the MOU;

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<sup>11/</sup>Id. at note 14.

<sup>12/</sup>7 U.S.C. §2269 is the USDA gift acceptance authority, and is implemented by AGPMR §104-43.8003. We assume for purposes of this memorandum that SOA is not an interested party.

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EXHIBIT C

OFFICE OF THE GENERAL COUNSEL OPINION ON THE MOU  
AMONG THE NFF, FS AND SUBARU OF AMERICA

- 8
- Delete the indemnification clause;
  - Remove the provision requiring accident repairs to be arranged through SOA; and
  - Remove the provision restricting the FS from participating in "similar activities" with other automobile or vehicle organizations.

Finally, although the USDA does not normally engage in the business of providing legal advice to private corporations, we would at a minimum suggest that NFF recognize it is not a United States Government agency and in the future refrain from making contractual commitments of United States property.

bcc: Kelly/Cordova

OGC:GLD:MTCORDOVA:kyd:720-4978:07/25/97:doc. SUBARU1.WPD

File Reference: 9 LEG

## Subaru Forester Sites

The National Forest Foundation, in partnership with the U.S. Forest Service, has selected the following 35 locations as sites for the Subaru Foresters. These locations provide the most visibility in Subaru's prime marketing areas. In addition, they are some of the most popular sites of the Forest Service. The Washington DC site will have a specially identified vehicle for the partnership and will be used by the National Forest Foundation for high visibility events.

## ALASKA

*Chugach National Forest*  
Close proximity to Anchorage.  
5 million annual recreation visits.

(1 Forester)

## ARIZONA

*Tonto National Forest*  
Close proximity to Phoenix.

(1 Forester)

## ARKANSAS

*Ouachita National Forest*  
High recreation use area in close proximity to Hot Springs .

(1 Forester)

## CALIFORNIA

*Eldorado National Forest*  
Close proximity to Sacramento, Lake Tahoe, Reno  
and Carson City. 15 million annual recreation visits.

(2 Foresters)

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**EXHIBIT D****SUBARU FORESTER SITES****COLORADO**

*Arapaho-Roosevelt National Forests* (2 Foresters)  
Close proximity to Denver.  
Site of Breckenridge, Keystone, Copper Mountain and many  
other popular ski resorts.  
28 million annual recreation visits.

*White River National Forest* (2 Foresters)  
Site of Aspen and Vail ski resorts.  
34 million annual recreation visits.

**PENNSYLVANIA**

*Allegheny National Forest* (1 Forester)  
Within a one day's drive of 1/3 of the Nation's population

**DISTRICT OF COLUMBIA** (1 Forester)

National Forest Foundation Headquarters

**IDAHO**

*Idaho Panhandle National Forest* (1 Forester)  
Close proximity to Spokane, WA, and Coeur d'Alene, ID.  
Site of Coeur d'Alene ski resort.  
10.5 million annual recreation visits.

*Boise and Sawtooth National Forests* (1 Forester)  
Close proximity to Boise and Sun Valley.  
7 million annual recreation visits.

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**EXHIBIT D****SUBARU FORESTER SITES****MICHIGAN**

*Huron-Manistee National Forest* (1 Forester)  
Close proximity to Grand Rapids.

**MINNESOTA**

*Chippewa National Forest* (1 Forester)

**MONTANA**

*Lola National Forest* (1 Forester)  
Headquartered in Missoula.

*Gallatin National Forest* (1 Forester)  
Close proximity to West Yellowstone and Bridger Bowl  
and Big Sky Ski Areas.

**NATUREWATCH**

Forest Service Nature Watch Coordinator (1 Forester)  
Lakewood, Colorado.

**NORTH CAROLINA**

*Nantahala National Forest* (1 Forester)  
Great White Water Center

**NEW HAMPSHIRE**

*White Mountain National Forest* (1 Forester)  
Close proximity to Boston.  
18.5 million annual recreation visits.



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**EXHIBIT D****SUBARU FORESTER SITES****NEW MEXICO***Santa Fe National Forest**(1 Forester)*

Close proximity to Albuquerque.

**OREGON***Siuslaw National Forest**Oregon Dunes National Recreation Area**(1 Forester)*

Close proximity to Portland.

6 million annual recreation visits.

*Mount Hood National Forest**(2 Foresters)*

Close proximity to Portland.

Site of Timberline ski resort, among others.

11 million annual recreation visits.

**UTAH***Wasatch-Cache National Forest—Salt Lake Ranger District**(2 Foresters)*

Close Proximity to Salt Lake City.

Site of Snowbird, Alta, Brighton and Solitude ski resorts.

27 million annual recreation visits.

*Wasatch-Cache National Forest—Ogden Ranger District**(1 Forester)*

Close proximity to Ogden

Site of Snowbird, Alta, Brighton and Solitude ski resorts.

7 million annual recreation visits.

**VIRGINIA***George Washington and Jefferson National Forests**(2 Foresters)*

Close proximity to Roanoke.

Major recreation area in the Southeast

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EXHIBIT D

SUBARU FORESTER SITES

WASHINGTON

*Gifford Pinchot National Forest*

(2 Foresters)

Close proximity to Portland.

Site of Mt. Saint Helens.

8 million recreational visits

*Mount Baker-Snoqualmie National Forests*

(2 Foresters)

Close proximity to Seattle.

31 million annual recreation visits.

WYOMING

*Bridger-Teton National Forests*

(2 Foresters)

Close proximity to Jackson Hole.

Site of Jackson Hole ski resort.

11 million annual recreation visits.

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**EXHIBIT E****LETTERS CONCERNING THE USE OF SMOKEY BEAR**

United States  
Department of  
Agriculture

Forest  
Service

Washington  
Office

14th & Independence Sv.  
P. O. Box 96090  
Washington, DC 20090-6090

File Code: 5110

Date: FEB 05 1998

Terry Austin  
Executive Director  
National Forest Foundation  
Suite 5600W  
1099 14th Street, NW  
Washington, DC 20005

Dear Mr. Austin:

We are concerned about the way Smokey Bear is being used at auto shows involving Subaru. Certain information has come to our attention that the use of Smokey may not be in compliance with law and policy. Smokey cannot endorse or give the appearance of endorsing any product.

Specifically, a small magnetic frame is provided by Subaru to frame a polaroid picture of attendees with Smokey. They are instructed to pick these up at the Subaru desk. The frame is not licensed nor is the process of distribution of Smokey's picture in this context approved. Products associated with Smokey Bear must carry the fire prevention message if they are not standard Cooperative Forest Fire Prevention catalog items. Company logos appearing on Smokey items must meet all licensing and legal guidelines.

The Woodsy Owl and Smokey Bear law of 1974 (PL 82-359, as amended by PL 92-318) clearly states Smokey's purpose is to educate the public about forest fire prevention and policy prohibits its use to endorse any product.

Please call Mele Fong at 202-205-4995 to discuss this issue as soon as possible to insure compliance with applicable laws and policy.

Sincerely,

MARY JO LAVIN, Ph.D.  
National Director  
Fire and Aviation Management

cc: Acting Deputy Chief S&PF  
Director, Cooperative Forestry  
Symbols Coordinator  
Advertising Council  
Cambridge Consulting Corporation

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**EXHIBIT E****LETTERS CONCERNING THE USE OF SMOKEY BEAR**

United States  
Department of  
Agriculture

Forest  
Service

Washington  
Office

14th & Independence SW  
P. O. Box 96090  
Washington, DC 20090-6090

File Code: 5110

Date: **FEB 05 1998**

Subject: Use of Smokey Bear at Commercial Public Events

To: Regional Foresters and Area Director

We are extremely concerned that the use of Smokey Bear at certain commercial public events is not in compliance with the laws and policy governing his use. The use of Smokey Bear at commercial public events is possible under current Forest Service policy. However, the objective of his appearance must, by law, focus on presenting the fire prevention message to the public. Smokey cannot endorse or give the appearance of endorsing any product.

Products associated with Smokey Bear must carry the fire prevention message. These must be approved through the licensing process if they are not standard Cooperative Forest Fire Prevention catalog items. Company logos appearing on Smokey items must meet all licensing and legal guidelines.

The Woodsy Owl and Smokey Bear law of 1974 (PL 82-359, as amended by PL 92-318) clearly states Smokey's purpose is to educate the public about forest fire prevention and policy prohibits its use to endorse any product.

There is an important need to distinguish Smokey Bear, his message, educational materials, advertising and commercially licensed products from those of other symbols, and to prevent their improper use.

You should monitor all Smokey Bear events to assure compliance with this direction and document the results for review.

MARY JO LAVIN  
National Director  
Fire and Aviation Management

cc: Acting Deputy Chief, S&PF  
Director, Cooperative Forestry  
Regional Fire Coordinators  
Symbols Coordinator  
National Forest Foundation  
National Association of State Foresters  
Advertising Council

## EXHIBIT F

## SUBARU 1997/98 AUTO SHOW SCHEDULE

SUBARU  
1997/98 AUTO SHOW SCHEDULE  
(Revised October 22, 1997)

SHOW	LOCATION	SMOKEY APPEARANCES	DATES
Auto Expo Long Island	Long Island, New York		10/23 - 10/26/97
Florida Int'l Auto Show	Tampa, Florida		10/29 - 11/02/97
Charlotte Int'l Auto Show	Charlotte, North Carolina		10/30 - 11/02/97
East Coast Auto Show	Atlantic City, New Jersey		11/01 - 11/09/97
New England Int'l Auto Show	Boston, Massachusetts		11/01 - 11/09/97
Seattle Int'l Auto Show	Seattle, Washington	Smoky Appearance	11/05 - 11/09/97
Sacramento Auto Show	Sacramento, CA		11/06 - 11/09/97
South Florida Int'l Auto Show	Miami, Florida		11/07 - 11/16/97
California Int'l Auto Show	Anaheim, California		11/22 - 11/30/97
San Francisco Int'l Auto Show	San Francisco, California		11/22 - 11/30/97
Arizona Auto Show	Phoenix, Arizona		11/26 - 11/30/97
Central Florida Int'l Auto Show	Orlando, Florida		12/03 - 12/07/97
Washington Auto Show	Washington D.C.	Smoky Appearance	12/26 - 01/03/98
Indianapolis Auto Show	Indianapolis, Indiana		12/27 - 01/04/98
Los Angeles Auto Show	Los Angeles, California		01/02 - 01/11/98
San Jose Auto Show	San Jose, California		01/07 - 01/11/98
Midlands, Auto Show of the	Omaha, Nebraska	Press Conference	01/08 - 01/11/98
North American Int'l Auto Show	Detroit, Michigan	Smoky	01/10 - 01/19/98
Auto Expo New Jersey	Secaucus, New Jersey		01/17 - 01/25/98
Pennsylvania Auto Show	Harrisburg, Pennsylvania		01/24 - 01/31/98
Houston Auto Show	Houston, Texas		01/24 - 02/01/98
Saint Louis Int'l Auto Show	St. Louis, Missouri		01/28 - 02/01/98
Portland Int'l Auto Show	Portland, Oregon	Smoky Appearance	01/29 - 02/01/98
Philadelphia Int'l Auto Show	Philadelphia, Pennsylvania	Smoky Appearance	01/31 - 02/08/98
Auto Expo Syracuse	Syracuse, New York		02/04 - 02/08/98
Baltimore Int'l Auto Show	Timonium, Maryland	Smoky Appearance	02/07 - 02/15/98
Chicago Auto Show	Chicago, Illinois	Press Conference	02/07 - 02/15/98
Buffalo Auto Show	Buffalo, New York		02/11 - 02/15/98
Inland Empire Int'l Auto Show	San Bernardino, California		02/11 - 02/16/98
Spokane New Car Show	Spokane, Washington		02/13 - 02/16/98
Cincinnati Auto Expo	Cincinnati, Ohio		02/14 - 02/22/98
Pittsburgh Auto Show	Pittsburgh, Pennsylvania	Smoky Appearance	02/14 - 02/22/98
San Diego Int'l Auto Show	San Diego, California		02/18 - 02/22/98
Reno Auto Show	Reno, Nevada		02/20 - 02/22/98
North Carolina Auto Expo	Raleigh, North Carolina		02/26 - 03/01/98
Tarrant County New Car Show	Fort Worth, Texas		02/26 - 03/01/98
Utah New Car & Truck Show	Salt Lake City, Utah	Smoky Appearance	02/26 - 03/01/98
Cleveland Int'l Auto Show	Cleveland, Ohio		02/28 - 03/08/98
Columbus Int'l Auto Show	Columbus, Ohio		02/28 - 03/08/98
Milwaukee Auto Show	Milwaukee, Wisconsin		02/28 - 03/08/98
Atlanta Int'l Auto Show	Atlanta, Georgia	Smoky Appearance	03/04 - 03/08/98
Dallas Auto Show	Dallas, TX	Smoky Appearance	03/04 - 03/08/98
Denver Auto Show	Denver, Colorado	Smoky Appearance	03/04 - 03/08/98
Kansas City Gr. Int'l Auto Show	Kansas City, Missouri		03/04 - 03/08/98
Rochester Int'l Auto Show	Rochester, New York		03/04 - 03/08/98
The Great American Auto Show	Albany, New York		03/06 - 03/08/98
Minneapolis & St. Paul Auto Show	Minneapolis, Minnesota	Smoky Appearance	03/14 - 03/22/98
Tulsa Auto Show	Tulsa, Oklahoma		03/19 - 03/22/98
Austin Auto Show	Austin, Texas		03/26 - 03/29/98
Virginia Int'l Auto Show	Richmond, Virginia	Smoky Appearance	03/27 - 03/29/98
New York Int'l Auto Show	New York City, New York	Press Conference Smoky	04/11 - 04/19/98



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**EXHIBIT H****FOREST SERVICE RESPONSE TO THE DRAFT REPORT**

United States  
Department of  
Agriculture

Forest  
Service

Washington  
Office

14th & Independence SW  
P. O. Box 96090  
Washington, DC 20090-6090

File Code: 1430  
Route To:

Date: FEB 11 1998

**Subject:** Office of Inspector General Discussion Draft Report, Propriety of Agreements Between the Forest Service, National Forest Foundation, and Subaru of America, 08801-2-HQ

**To:** James R. Ebbitt  
Assistant Inspector General for Audit  
Office of Inspector General

We have completed a preliminary Forest Service (FS) review of the Office of Inspector General (OIG) Discussion Draft Report entitled "Propriety of Agreements Between the Forest Service, National Forest Foundation (NFF), and Subaru of America," Audit Report No. 08801-2-HQ. We were provided with a copy of the Draft on February 9, 1998.

Since receiving the Discussion Draft, we have met with officials of the NFF and have told them that:

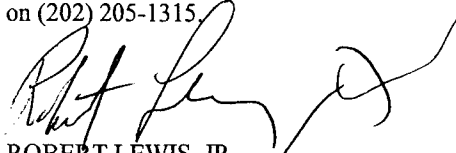
1) Smokey Bear will not appear at future auto shows and they must modify their agreement with, Subaru of America to eliminate any commitments or requests for the involvement of Smokey Bear; 2) they must discontinue any commitment or branding of NatureWatch materials; (3) they must ensure that Forester vehicles appearing at auto shows do not bear the FS shield; and (4) remove the "Official Vehicle " decal from all Forester vehicles donated to the FS by the NFF. These actions should substantially satisfy recommendations 1, 2a, and 2b.

The FS will cancel its MOU with NFF and initiate discussions to renegotiate the agreement. Also, the FS has requested that the NFF modify its agreement with Subaru of America to reflect the changes agreed upon when the FS/NFF agreement has been negotiated.

We believe that by taking these actions, the FS will avoid the need to cancel further participation in the partnership. It is crucial to enhancing the FS's mission that partnerships remain a viable option.

The FS intends to respond to this draft report in a complete and comprehensive manner but cannot do so in the 3-day response period we were given. Nonetheless, realizing the seriousness of the matters raised by OIG, we have, as indicated, already met with the NFF to be certain they are aware of what immediate changes must be made.

If you have any questions, please contact our Agency External Audit Liaison, Virginia Heerwagen on (202) 205-1315.



ROBERT LEWIS, JR.  
Acting Associate Chief